

## **DIRECT TAX**

### **News**

#### **CBDT notifies creation of special cell for startups, gives out email id, phone number**



The Central Board of Direct Taxes (CBDT) notified creation of a five-member special cell to address grievances of startups with relation to angel

tax and other tax-related issues. An order issued by the CBDT said that the 'startup cell' will be headed by the member (Income Tax and Computerisation) of the board. "The cell will work towards redressal of grievances and mitigate tax-related issues in case of startup entities with respect to administration of Income-tax Act, 1961".

#### **Off-market share deals will not get any surcharge relief**

The government's decision to partially roll back the additional tax surcharge on share trades has come as a relief to several overseas funds, but promoters and private equity firms wanting to sell their stake off-market have little to cheer about. They will have to pay higher taxes if they are selling their stakes by direct transfer of shares especially in mergers and acquisitions. Similarly, a foreign fund holding Indian shares looking to sell out to another will have to shell out more in surcharge. According to tax experts shares tendered through initial public offerings (IPOs) will, however, be exempt from the higher tax since there is a special exemption carved in the Income Tax Act.

#### **Only startups with turnover of up to Rs. 25 cr eligible for tax holiday: CBDT**

Seeking to allay concerns on tax holiday for startups, the tax department said only small startups with a turnover of up to Rs. 25 crore will get tax holiday on fulfilling certain conditions. It did not recognise the Rs. 100-crore turnover definition of a small startup put up by the Department for Promotion of Industry and Internal Trade (DPIIT). As per CBDT "Since the intention was to support the small startup, the turnover limit of Rs. 25 crore was considered reasonable for granting profit linking deduction". Startups broadly under Section 80 IAC of the Income Tax Act are allowed 100 per cent deduction of income for three years out of seven years from the year of its incorporation. "The CBDT has clarified that small start-ups with turnover up to Rs. 25 crore will continue to get the promised tax holiday as specified in Section 80-IAC of the Income Tax Act, 1961, which provides deduction for 100 per cent of income of an eligible

start-up for 3 years out of 7 years from the year of its incorporation".

#### **CBDT raises monetary threshold limit for I-T dept for filing appeals**

Just a year after the Central Board of Direct Taxes (CBDT) raised the threshold monetary limit for the Income-Tax Department for filing appeals in higher judicial forums, the Board raised the limit again. The threshold now stands at Rs 50 lakh for appeals before the appellate tribunal in income-tax matter. Similarly, the threshold has been raised to Rs 1 crore for high court and Rs 2 crore for Supreme Court. Last year, the CBDT had raised the monetary limit for appeal in tribunal to Rs 20 lakh from Rs 10 lakh earlier. The threshold was more than doubled in case of appeal before high courts to Rs 50 lakh from Rs 20 lakh earlier. For appeal before the apex court, the limit had been raised four-fold to Rs 1 crore.

#### **Change in TDS rule on insurance to put additional tax burden on single premium plans from Sept 1**

In her first Budget, India's first woman Finance Minister Nirmala Sitharaman announced that there will be a change in the rule and the rate of tax deducted at source (TDS) on the maturity amount,



where the premium amount is more than 10 per cent of the sum assured (more than 20 per cent of sum assured (SA) for policies issued between April 1, 2003 and March 31, 2012). In case of term plans, where premiums are much lower than 10 per cent of the SA, as well as for most of the regular premium endowment plans, the maturity amount is not taxable under the provision of sub-section 10D of section 10 of the Income Tax Act on the ground that the premium is less than the certain percentage of the SA. But in case of single premium policies, the premium is generally much more than 10 or 20 per cent of the SA and hence the maturity amount becomes taxable as per section 194DA of the Act.

#### **CBDT has withdrawn enhanced surcharge on tax payable on the transfer of certain assets.**

In order to encourage investment in the capital market, it has been decided to withdraw the enhanced surcharge levied by Finance Act, 2019 on tax payable at a special rate on income arising from the transfer of equity share/unit referred to in section 111A and section 112A of the Income-tax Act, 1961 from the current FY 2019-20. The

enhanced the surcharge shall be withdrawn on tax payable at special rate by both domestic as well as foreign investors on long-term & short-term capital gains arising from the transfer of equity share in a company or unit of an equity-oriented fund/business trust which are liable for securities transaction tax and also on tax payable at the special rate under section 115AD by the FPI on the capital gains arising from the transfer of derivatives. However, the tax payable at the normal rate on the business income arising from the transfer of derivatives to a person other than FPI shall be liable for the enhanced surcharge.

**The Taxation Law (Amendment) Ordinance, 2019 - Corporate tax slashes to fire up economy.**

- New provision inserted in the income tax act with effect from fiscal year 2019-20, that allows any domestic company to pay income tax at the rate of 22% (with surcharge and cess 25.17%) subject to condition they will not avail any incentive or exemptions.
- Manufacturing companies set up after October 1 to get option to pay 15% tax. Effective tax rate for new manufacturing firms to be 17.01% inclusive of surcharge & tax.
- Listed companies that have announced buyback before July 5, 2019, tax on buyback of shares will not be charged.
- Higher surcharge will also not apply on capital gains on sale of security including derivatives held by FPIs.
- Enhanced surcharge will not apply to capital gains arising on equity sale or equity-oriented funds liable to STT stabilise flow of funds into capital markets
- To provide relief to companies availing of concessions and benefits, a MAT relief by reducing it from 18% to 15%.
- CSR 2% spending to include government, PSU incubators and public funded education entities, IITs.



**CBDT has constituted a Start-up Cell for redressal of grievances related to Start-ups.**

As part of the measures for mitigating the genuine difficulties of Start-ups, it was decided that a dedicated cell would be set up under a Member of CBDT for addressing the specific problems of Start-ups. In order to redress grievances and address various tax-related issues in the cases of Start-ups, a Start-up Cell has been constituted by CBDT on 30.08.2019. The Cell will work towards redressal of grievances and mitigate tax-related issues in case of Start-up entities with respect to the administration of the Income-tax Act, 1961. Start-up entities can approach the Cell for a speedy resolution of their grievances.

**Notifications**

**Notification No. 56/2019- G.S.R. 614(E), Dated 2 Aug 2019**

The Central Government notifies that for the purposes of the 'Bangalore Water Supply and Sewerage Board' in respect of the income arising, namely Water Charges, Sanitary and Borewell Charges, Special Sanitary Charges, Meter Charge, Bulk Water Charges, Rent and Interest on surplus amount earned out of the above shall be subject to the fulfillment of following conditions (a) income should not be from any commercial activity (b) activities and the nature of the income shall remain unchanged throughout the financial years and (c) shall file return of income properly and shall apply with respect to the assessment years 2020-2021 to 2024-2025.

**Notification No. 57/2019- G.S.R. 614(E), Dated 27 Aug 2019**

The Central Government hereby notifies that the provisions of the Multilateral Convention to Implement Tax Treaty related Measures to Prevent Base Erosion and Profit Shifting signed by India at Paris shall be given effect to in the Union of India, in accordance with India's Position under the said Convention.

**Notification No. 58/2019- G.S.R. 614(E), Dated 27 Aug 2019**

The Protocol, amending the Convention between the Government of the Republic of India and the Kingdom of Spain for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital which was signed on the 8th February, 1993 shall be given effect in the Union of India.

**Notification No. 59/2019- G.S.R. 614(E), Dated 30 Aug 2019**

- Any person, who has not been allotted a PAN but possesses the Aadhaar number and furnished his Aadhaar number in lieu of the PAN, shall be deemed to have applied for allotment of PAN and he shall not be required to submit any documents under this rule.
- Any person, who has not been allotted a PAN but possesses the Aadhaar number may apply for allotment of the PAN to the authorities by intimating his Aadhaar number and he shall not be required submit any documents under this rule.
- The Principal Director or Director General of Income-tax shall lay down the formats, standards and procedure for furnishing, intimation and authentication of Aadhaar number under sub-rule (1A)(1B)(1C); or obtaining demographic information of an individual from the Unique Identification Authority of India, for ensuring secure capture and transmission of data and shall



also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to above stated responsibilities.

**Notification No. 60/2019 [F.No. 370142/14/2018-TPL]/SO 3215(E), Dated 5 Sept. 2019**

Amendment is made in the procedure of getting 80 G status Institution by filing Form No. 56 and Form No. 10G online.

**Notification No. 61/2019- Income Tax Dated: 12 Sept. 2019**

A new Scheme may be called the E-assessment Scheme, 2019 has been introduced by the Board.

**Notification No. 62/2019 [F.No. 370149/154 /2019-TPL] /SO 3265(E) Dated: 12 Sept. 2019**

The provisions of clause (7A) of section 2, section 92CA, section 120, section 124, section 127, section 129, section 131, section 133, section 133A, section 133C, section 134, section 142, section 142A, section 143, section 144A, section 144BA section 144C and Chapter XXI of the Act shall apply to the assessment made in accordance with the E Assessment Scheme subject to some exceptions, modifications and adaptations.

**Notification No. 63/2019 [F.No. 370142/11/2019-TPL] /SO 3266(E), Dated 12 Sept. 2019**

The Cost Inflation Index for the F.Y. 2019-20 will be 289.

**Notification No. 64/2019 [F.No. 500/1/2014-APA-II] / SO 3272(E), Dated 13 Sept. 2019**

In exercise of the powers conferred by the third proviso to sub-section (2) of section 92C of the Income-tax Act, 1961 (43 of 1961)(hereinafter referred to as the 'said Act'), read with proviso to sub-rule (7) of rule 10CA of the Income-tax Rules, 1962, the Central Government hereby notifies that where the variation between the arm's length price determined under section 92C of the said Act and the price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed one per cent. of the latter in respect of wholesale trading and three per cent. of the latter in all other cases, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price for assessment year 2019-2020.

**Notification No. 65/2019- Income Tax Dated: 13/09/2019**

In pursuance of the powers conferred by sub-section (1) and (2) of section 120 and sub-section (2) of Section 143 of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as said Act), read with rule 12E of the Income-tax Rules, 1962, the Central Board of Direct Taxes hereby authorises that the Assistant Commissioner of Income-tax (e-Verification), having headquarter at Delhi, to act as prescribed Income-tax Authority for the purpose of sub-section (2) of section 143 of the said Act, in respect of returns furnished under section 139 or in response to a notice under sub-section (1) of section 142 of the said Act during the financial year

commencing on 1st day of April, 2018 for the purposes of issuance of notice under sub-section (2) of section 143 of the said Act.

**Notification No. 67/2019 [F.No. 370142 /8/2019-TPL] GSR 662(E), Dated 17 Sept. 2019**

Rule 10UD, 10 UE, 10UF is inserted after Rule 10UC in Income Tax Rules, 1962 related to Approving Panel

**Notification No. 68/2019 [F.No.370142/12/2019-TPL]/SO 3356(E), Dated 18 Sept. 2019**

Exemption to Cash Replenishment Agencies (CRA's) and franchise agents of White Label Automated Teller Machine Operators (WLATMO's) under clause (v) of the proviso to section 194N of the Income Tax Act, 1961

**Notification No. 69/2019/ F.No. 370142 /17/2019-TPL/ GSR 679(E), Dated 20 Sept. 2019**

Higher depreciation on certain motor cars, motor buses, motor lorries and motor taxis

**Notification No. 70/2019/F. No. 370142/12/2019-TPL (Part-1), SO 3427(E), Dated 20 Sept. 2019**

Exemption to commission agents or traders operating under APMC under clause (v) of the proviso to section 194N of the Income Tax Act, 1961

**Notification No. 74/2019 [F.No.370142/18 /2019-TPL] / GSR 694(E), Dated 27 Sept. 2019**

Clarification on credit of TDS u/s 194N of the Act on cash withdrawn. Finance Minister in the union budget presented on 05th July, 2019 has introduced a section 194N regarding tax deduction at source at the rate of 2% if cash withdrawal by any person exceeds 1 Crore from one or more accounts during any financial year. There was some confusion in which year, would the credit for such TDS would be allowed. In this regard, the CBDT has clarified that credit of TDS will be given in the year in which Tax has been deducted.

**Notification No. 75/2019 [F.No. 225/75/2019-ITA.II], Dated 28 Sept. 2019**

Extension of due date for linking of PAN with Aadhaar from 30.09.2019 to 31.12.2019

**Notification No.76/2019 [F.No.370142/12/2017 -TPL] / GSR 701(E), Dated 30 Sept. 2019**

Amendment in Rule 10CB of the Income-tax Rules, 1962 in respect of computation of interest income pursuant to secondary adjustment made under Section 92CE of the Income-tax Act, 1961

**Circular No. 17/2019, Dated 8 Aug 2019**

Further Enhancement of Monetary limits for filing of appeals by the Department before Income Tax Appellate Tribunal, High Courts and SLPs/appeals before Supreme Court - Amendment to Circular 3 of 2018 - Measures for reducing litigation

S.No	Appeals/SLPs in Income-tax matters	Monetary Limit (Rs.)
1	Before Appellate Tribunal	50,00,000
2	Before High Court	1,00,00,000

3	Before Court	Supreme	2,00,00,000
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**Circular No. 18/2019, Dated 8 Aug 2019**

Clarifications regarding queries raised by the stakeholders in respect of filling-up of the ITR forms are issued.

**Circular No. 19/2019, Dated 14 Aug 2019**

The Board has decided that no communication shall be issued by any income tax authority relating to assessment, appeals, orders, statutory or otherwise, exemptions, enquiry, investigation, verification of information, penalty, prosecution, rectification, approval etc. to the assessee or any other person, on or after the 1 October, 2019. In exceptional cases the communication may be issued manually but only after recording reasons in writing in the file and with prior written approval of the Chief Commissioner / Director General of income tax.

**Circular No. 20/2019, Dated 19 Aug 2019**

The amount paid for acquiring the 'Participating Interest' shall not be treated either as cost for acquiring the share in partnership or investment for acquisition of a member's interest in an association of persons or body of individuals, rather it would be treated as an amount paid to acquire the intangible assets and ii. the amount paid for acquiring the 'Participating Interest', after reducing component of cost attributable and it would be eligible for claim of depreciation.

**Circular No. 21/2019, Dated 27 Aug 2019**

It is clarified that a non-resident shall not be required to disclose details of his directorship in a foreign company, which does not have any income received in India, or accruing or arising in India. It is further clarified that a non-resident taxpayer, who is Director in a domestic company and also in a foreign company, which does not have any income received in India, or accruing or arising in India, should answer the relevant question in the affirmative, and provide details of directorship in the domestic company only. It is also clarified that a resident taxpayer would continue to be required to disclose details of his directorship in any company, including foreign company, in the relevant column.

**Circular No. 22/2019, Dated 30 Aug 2019**

In order to provide hassle-free tax environment to the Startups, a series of announcements have been made by the Hon'ble Finance Minister in her Budget Speech of 2019 and also on 23rd August, 2019. To give effect to these announcements, the Central Board of Direct Taxes (CBDT) has issued various circulars/ clarifications in the matter. The Circular is issued to consolidate all such notifications regarding Startups Assessments.

**Circular No. 23/2019-Income Tax dated 06/09/2019**

Board has decided that notwithstanding anything contained in any circular issued U/S 268A specifying monetary limits for filing of departmental appeals before Income Tax Appellate Tribunal

(ITAT), High Courts and SLPs/appeals before Supreme Court, appeals may be filed on merits as an exception to said circular, where Board, by way of special order direct filing of appeal on merit in cases involved in organised tax evasion activity.

**Circular No. 25/2019-Income Tax dated 09/09/2019**

As a one-time measure, the condition that compounding application shall be filed within 12 months, is hereby relaxed, under the following conditions:

- i) Such application shall be tiled before the Competent Authority i.e. the Pro CCIT/CCIT/Pr. DGIT/DGIT concerned, on or before 31.12.2019.
- ii) Relaxation shall not be available in respect of an offence which is generally/normally not compoundable, in view of Para 8.1 of the Guidelines dated 14.06.2019.

**Circular No. 26/2019, Dated 26 Sept. 2019**

Clarifications in respect of filling-up of return forms for the Assessment Year 2019-20

CBDT vide circular no. 18 and 19 of 2019 has earlier issued certain FAQs clarifying the general doubts and queries in respect of certain problems being faced by the assessee while filing up ITR forms, now vide this circular again certain FAQs has been issued by the CBDT of which some of the important clarification are as under:

1. In the schedule SH-1 of ITR-6 certain details of shareholders is to be submitted which includes date of allotment, issue price and amount received, however, in the cases where shareholders has acquired shares by way of transfer from other shareholder, the assesses were facing problems that what should be filled up in such places. In this regard it has been clarified that date of transfer should be considered as date of allotment and in the column amount received and issue price, amount received from original allottee and issue price of original allottee be considered.
2. Where PAN of the shareholder is not available, NORES9999N be filled up in the case of non-resident and NOAVL9999N in the case of residents whose PAN is not available due to practical difficulties.

**Circular No. 27/2019 , Dated 26 Sept. 2019**

Assessees are required to produce/ cause to produce their response/evidence to any notice/ communication/ show-cause issued by the Assessing Officer electronically (unless specified otherwise) through their 'E-filing' account on the 'E-filing' portal.

**Circular No. 28/2019, Dated 27 Sept. 2019**

CBDT further condones the delay in filing of Form No.10B for AY 2016-17 and AY 2017-18. As per rule 17B of the Income tax Rules, 1962, a Trust / Institution is required to furnish Audit Report electronically in Form no. 10B by due date of filing of income tax return. Earlier, CBDT has condoned the delay in filing of Form 10B for AY 2016-17 and AY 2017-18 till 30th September, 2019. Now, vide this circular CBDT has further condoned the delay in filing of Audit Report from 30th September, 2019 to 31st March, 2020.

### **Case Law**

**Unexplained cash credit u/s. 68 - addition cannot be made merely on the basis of non production of the third party**

**The ACIT 25 (2), Mumbai Versus M/s. H.K. Pujara Builders 2019 (8) TMI 1113 - ITAT Mumbai**

No deficiencies whatsoever were found in the documentary evidences submitted by the assessee before the AO which admittedly included copy of PAN, ITR acknowledgement, audited financial statements, computation of income, confirmation from lender, bank statements evidencing the immediate source of credit of the lender etc. All these documents clearly prove the identity, creditworthiness of the lender and genuineness of the transaction in the peculiar facts of the instant case. Hence, it could be safely concluded that assessee had indeed complied with all the three necessary ingredients of Section 68. Further it is the duty of the revenue to produce the party as their witness in order to enable the assessee to cross examine the said party, if it so desires. This responsibility cannot be shifted to the assessee by the AO. CIT(A) had rightly deleted the addition made u/s 68 of the Act.

**Genuineness of gift cannot be doubted on the human probabilities, accordingly penalty under section 271(1)(c) cannot be levied as there is no concealment of income or furnishing inaccurate details.**

**Principal Commissioner Of Income-Tax Central Kanpur Versus Dinesh Chandra Jain 2019 (8) TMI 1419 - Allahabad High Court**

Penalty u/s 271(1)(c) the Assessing Officer did not record any finding as to incorrect, erroneous or false return of income filed by the assessee which could lead to the fact that assessee has furnished inaccurate particulars of income and make him liable for penalty under Section 271(1)(c) of the Act. AO had only doubted the genuineness of the gifts on ground of human probabilities and had also doubted the creditworthiness of donors and genuineness of transaction. The Tribunal on the other hand had recorded finding regarding the identity of creditors, their creditworthiness and genuineness of the transactions which were before the AO but he had not properly appreciated the same and discarded and doubted the genuineness of gifts on ground of human probabilities, no penalty can be imposed u/s 271(1)(c) of the Act

**Addition cannot be made u/s 43B for those expenses which are not debited to the P&L Account**

**M/s Comfortline Systems Private Ltd, Hyderabad Versus Income Tax Officer, Ward 1 (4) Hyderabad 2019 (8) TMI 1412 - ITAT Hyderabad**

Certain deductions are allowable on actual payment u/s 43B of the Act. By not debiting the service tax to the P&L A/c, the assessee has not claimed it as an expenditure. Therefore, the disallowance of the same u/s 43B of the Act would not arise.

**Disallowance of interest payment u/s 40(a)(ia) cannot be made where recipient has offered the income in his hands**

The recipient has offered the income to tax in his hands and therefore, the proviso to section 201(1) applies and the assessee cannot be deemed to be an assessee in default. Admittedly, the assessee has not been treated as an assessee in default u/s 201(1) and the proviso to section 201(1) has been held to be retrospectively applicable. Therefore disallowance u/s 40(a)(ia) cannot be made subject to verification that the recipient has offered the income to tax in its hands.

**Confirmation by the Investors regarding the genuineness and correctness of the investment thus addition u/s 68 is not justifiable**

**Modern Dalkhola Flour Mills Pvt. Ltd. Versus Dcit, Circle-2 (1), Jalpaiguri And (Vice-Versa) 2019 (8) TMI 1333 - ITAT Kolkata**

There is hardly any dispute between the parties *inter alia* about the basic admitted fact of the assessee to have raised the impugned share application money from eleven related parties, the AO having taken recourse to sec. 131/133(6) process in all of their cases, these investors having replied from the other end in support of the correctness of the share application money. The assessee's share applicants confirmed the assessee's case by fling all necessary documentary evidence as well. Assessing Officer erred in treating the assessee's share application / premium amount as unexplained cash credits in entirety.

**Only successive layers of transactions cannot be considered as conclusive finding to justify the undisclosed income**

**Smt. Bhagwati Devi Patwari, Smt. Priyanka Patwari, Smt. Sarika Patwari, Shri Sanjib Patwari, Shri Sanjay Kumar Patwari, Shri Sunil Kumar Patwari, Shri Sajjan Kumar Patwari, Sajjan Kumar Patwari (HUF) Versus Deputy Commissioner of Income-Tax, Central Circle-2 (2), Kolkata. 2019 (8) TMI 1324 - ITAT Kolkata**

No cogent material was brought on record which in any manner showed that either the survey team or the AO had identified the persons to whom the entities/concerns belonged and in whose accounts the cash was allegedly deposited neither any of the proprietors of bank accounts where cash was deposited were personally examined by the AO nor any independent enquiries were made from them to verify the true & correct facts of the case. Merely because while tracing the successive layers of transactions, the AO found some cash deposits in the accounts of unrelated parties; in considered view, on such fact alone the AO could not record a conclusive finding that the cash so deposited represented appellant's undisclosed income which was routed through several accounts.

**Validity of notice u/s 148 is based on the reasons recorded which will confer jurisdiction to issue notice**

**Shri. Pushpendra Singh And Smt. Pushpa Versus Income Tax Officer- 1 (2) (3) , Agra 2019 (8) TMI 1315 - ITAT Agra**

The proprietary of notice under section 148, based upon reasons recorded is not dependent upon the objection or no objection by the assessee at the stage of assessment. If the reasons recorded, independently can withstand the test of judicial scrutiny, only such reasons will confer jurisdiction to issue notice and frame assessment in pursuance thereto. the question that arises for our determination is that whether escapement of income can be presumed on the basis of non-compliance or lack of compliance or even no compliance of the above Letters. We are of the considered opinion that the reasons recorded by the Assessing officer, are no reasons in the eye of law for assuming jurisdiction in this case.

#### **Deduction of Capital gains which are exempt u/s 54EC cannot be considered in computing book profits**

**M/s Fibroflex (India) Pvt. Ltd. Versus The Dy. Commissioner-Of Income Tax, Circle-3 (4), Mumbai. 2019 (8) TMI 1261 - ITAT Chennai**

The capital gains which are exempt u/s.54EC cannot be reckoned for the purpose of computing book profit u/s.115JA. It was held that the adjusted book profits would be further eligible to the benefits set out in the other provisions of the Act and the plain language of Section 115 JB thus admits of the grant of relief u/s 54 EC in an assessment there under.

#### **Old & unpaid liability for sundry creditors**

**PCIT Vs Pukhraj S Jain (Bombay High Court) ITA No. 1288 of 2016**

S. 41(1): It is well settled through series of judgments that merely because a debt has not been repaid for over three years, would not automatically imply cessation of liability. Exhaustion of period of limitation may prevent filing of recovery proceedings in a Court of law, nevertheless it cannot be stated by itself that the liability to repay the amount had ceased. Such liability cannot be termed as bogus

#### **Mandatory for the AO to follow the procedure laid down**

**Fomento Resorts and Hotels Limited vs ACIT (Bombay High Court) Tax Appeal No. 63 of 2007**

S. 147/148: It is mandatory for the AO to follow the procedure laid down in GKN Driveshafts 259 ITR 19 (SC) and to pass a separate order to deal with the objections. The disposal of the objections in the assessment order is not sufficient compliance with the procedure. The failure to follow the procedure renders the assumption of jurisdiction by the Assessing Officer ultra vires (Bayer Material Science 382 ITR 333 (Bom) & KSS Petron (Bom) followed)

#### **Income arising from the business of a SEZ Unit, which is exempt u/s 10AA, is subject to MAT from AY 2012-13 onwards**

**Safeflex International Ltd. Vs. ITO (ITAT Jaipur) ITA No. 769/JP/2018**

S. 10AA/ 115JB: Even income arising from the business of a SEZ Unit, which is exempt u/s 10AA, is subject to MAT from AY 2012-13 onwards owing to the insertion of the proviso to s. 115JB(6). The

earlier judgements holding that the exemption provisions would prevail over s. 115JB are not good law after the insertion of the proviso to s. 115JB(6) (CBDT Circular No. 2/2012 dated 22.5.2012 referred)

#### **Liability of professionals acting as Non-executive directors**

**Rajendra Shah vs. State of Maharashtra (Bombay High Court) CWP No. 1528 of 2016**

Practicing professionals are prohibited from acting as full time directors. They can only act as non-executive directors not performing administrative duties. Such persons cannot be prosecuted for offenses committed by the company. it will be a travesty of justice to prosecute all Directors if the offense is committed without their knowledge. The accounts are signed by such directors in a routine manner and they are not subject to vicarious liability (Homi Phiroz Ranina & Ors. vs. State of Maharashtra 2003 (3) Mh.L.J. 34 followed)

#### **The officer recording the reasons u/s 148(2) for reopening the assessment & the officer issuing notice u/s 148(1) has to be the same person**

**Pankajbhai Jaysukhlal Shah vs. ACIT (Gujrat High Court) C/SCA/230/2019**

S. 147/148/292B: The officer recording the reasons u/s 148(2) for reopening the assessment & the officer issuing notice u/s 148(1) has to be the same person. If the reasons are recorded by the DCIT but the notice is issued by the ITO, the reassessment proceedings are invalid. The s. 148 notice is a jurisdictional notice. Any inherent defect therein cannot be cured u/s 292B. The fact that the assessee participated in the proceedings is irrelevant

#### **Condonation of delay**

**Atlas Copco (India) Limited vs. DCIT (ITAT Pune) ITA No.649/PUN/2013 & 1726/PUN/2014**

S. 144C/ 254: (i) Condonation of delay of 1018 days: None should be deprived of an adjudication on merits unless it is found that the litigant deliberately delayed the filing of appeal. Delay due to improper legal advice should be condoned. A technical view of dismissing the appeal on the ground of delay should not be taken if the legal issue has to be decided for other years (ii) A draft assessment order u/s 144C issued with a notice of demand u/s 156 and a s/ 271(1)(c) penalty notice is null and void (Eaton Fluid Power 96 TM.com 512 followed, BS Ltd 94 TM.com 346 (Hyd) distinguished)

#### **Mere issue of a s. 148 notice is not sufficient**

**Harjeet Surajprakash Girotra Vs. UOI (Bombay High Court) WRIT PETITION NO.513 OF 2019**

S. 148, 282, Rule 127: Mere issue of a s. 148 notice is not sufficient. Service is essential. If the postal authorities return the notice unserved, the Dept has to serve under Rule 127(2) using one of the four sources of address (such as PAN address, Bank address etc). The failure to do so renders the

reassessment proceedings invalid (All imp judgements referred)

### **LTCG on listed shares are exempt from tax does not mean that LTCL on such shares is not available for set-off against taxable income**

#### **United Investments vs. ACIT (ITAT Kolkata) I.T.A. No. 511/Kol/2017**

S. 10(38): The fact that "long-term capital gains" on listed shares are exempt from tax does not mean that "long-term capital loss" on such shares is not available for set-off against taxable income. While the gains are exempt, there is no bar against claiming set-off of the loss (J.H. Gotla 156 ITR 323 (SC) distinguished, CBDT Circular No.7/2013 dated 16.07.2013 referred, Raptakos Bret 69 SOT 383 (Mum) followed)

### **Search Assessments**

#### **Trilok Chand Choudhary vs. ACIT (ITAT Delhi) ITA No.5870/Del/2017**

S. 153A, 153C Search Assessments: The Act has separate provisions for making assessment in case of material found in the course of search from premises of assessee (s. 153A) as well as material found in course of search at premises of third party (S. 153C). Even if search happens in case of assessee, the AO cannot initiate proceedings u/s 153A if incriminating material is found during search of other person. Proceedings should be initiated u/s 153C and failure to do so renders the addition in the s. 153A assessment void-ab-initio (Vinod Kumar Gupta 165 DTR 409 (Del) distinguished)

### **BENAMI LAW**

#### **Finance ministry amends PMLA Act to offer clarity on digital KYC**

The finance ministry has amended the Prevention of Money Laundering Act, 2002, to clarify the various modes of capturing customer details electronically, in what could potentially change the way regulated entities such as banks and telecom companies capture these details completely.



PMLA is the means through which lenders, investment platforms and telecom companies are authorised to capture customer details before on boarding them on to their platform.

"The notification from the government brings in the different modes through which full customer details can be captured, Aadhaar, e-KYC, electronic documents which are digitally. The amendments have also added electronic documents besides physical documents, which will now allow regulated entities to capture full customer details through e-KYC as well, removing the need for physical paper and photos.

#### **Congress leader Kuldeep Bishnoi's hotel worth Rs 150 crore attached as benami asset.**

A hotel worth Rs 150 crore in a prime business space in Gurgaon has been attached by the

Income-tax department as a "Benami" asset of Haryana Congress leader Kuldeep Bishnoi and his brother.

They said the Delhi benami prohibition unit of the department has issued an order for attachment of the hotel property.

The order has been issued under section 24(3) of the Prohibition of Benami Property Transactions Act, 1988, they said.

The department had conducted extensive searches against Bishnoi and his family in July this year on charges of tax evasion.

### **GST**

#### **News**

#### **MSME's GST refund dues to be settled in a month.**

All pending GST refunds will be paid within the next 30 days, while future dues will be settled in 60 days. The government also plans to amend the MSME Act to provide a single, holistic definition for MSMEs, it said as part of the measures announced to revive the economy. [Source-Economics Times]

#### **GST Officials Arrest Maharashtra Businessman for Rs. 24.55 Crore Tax Fraud**

A businessman has been arrested by Goods and Services Tax (GST) officials in Maharashtra's Thane district for allegedly evading taxes worth Rs. 24.55 crore



by fraudulently issuing invoices without actual supply of goods. He allegedly availed wrong Input Tax Credit of Rs. 24.55 crore on the basis of bogus invoices for Rs. 136.38 crore without the actual supply of goods. [Source- NDTV]

#### **Taxmann.com releases tool to find GST rate applicable on different dates**

Taxmann.com, a research website for tax and corporate laws, has lunched a new tool to find the goods and services tax (GST) rates applicable on different dates. The GST regime, which came into force from July 1, 2017, has 7 rates for goods (Nil, 0.25 per cent, 3 per cent, 5 per cent, 12 per cent, 18 per cent, 28 per cent) and 5 rates for services (Nil, 5 per cent, 12 per cent, 18 per cent, 28 per cent). These rates have been changed frequently since July 2017.

[Source-Business Standard]

#### **Is the new GST return filing system really simple?**

The new return filing system, the government maintains a similar working model, however at the same time the new system aims to reduce manual efforts and use technology extensively. It aims to achieve this by having a single main return (GST RET-1/2/3) supported by two annexures (GST ANX-1 & GST ANX-2) that work dynamically on a separate facility. [Source- Economics Times]

#### **Maruti Suzuki slashes production by 34 per cent, SIAM seeks GST relief**

India's largest carmaker, cut its production by 33.99 per cent in August, making it the seventh straight month that it has reduced its output. The

slew of measures announced by the finance minister might not be enough to boost sales, said auto industry lobbying body Siam on Monday. It added that the government should urgently consider reducing GST rates from 28 per cent to 18 per cent. [Source- New Indian express]

#### **Aadhaar verification to be mandatory for new dealers from Jan**

The GST Network on Saturday decided to make Aadhaar authentication or physical verification mandatory for new dealers from January 2020 to check malpractices in Goods and Services Tax. Afterwards, all those enrolled on GSTN would be asked to provide their Aadhaar numbers.

[Source- Economics Times]

#### **GST & Excise dept arrest a person for ₹35 crore evasion**

The GST and Central Excise Department, Chennai Outer, has arrested a person for GST evasion of about ₹35 crore. The individual, along with accomplices, had floated 36 shell companies and taken GST registration misusing KYC documents of others individuals allegedly for the purpose of receiving and issuing tax invoices worth ₹250 crore without actual receipt or supply of goods.

[Source— The Hindu Business Line]

#### **GST Annual filing waived off for taxpayers below Rs 2 cr turnover**

The GST Council, in its 37th meeting held at Goa provided relief to MSMEs by allowing them waiver to file GSTR 9 and GSTR-9A.

a) The relaxation in filing of annual returns for MSMEs for FY 2017-18 and FY 2018-19, a statement said waiver of the requirement of filing FORM GSTR-9A for Composition Taxpayers.

b) Filing of FORM GSTR-9 for those taxpayers who (are required to file the said return but) have aggregate turnover up to Rs. 2 crore made optional for the said tax periods.

[Source-The Economics Times]

#### **Around 60 realty firms face GST anti-profiteering cases**

The National Anti-Profiteering Authority (NAA) for goods and services tax is likely to deliver orders, starting next month, in around 60 profiteering cases filed by homebuyers against the builders from across the country. Godrej Properties, Hiranandani Realtors and Salarpuria Sattva are among the prominent builders facing the charges, officials privy to the development said. The complainants have alleged that realtors didn't pass on the benefit of the ITC to the customers and instead profited from the credits

[Source- The DNA]

#### **Thanks to the new online system, GST refunds will be seamless, pick up speed: GSTN chief**

The 'Online Refund Processing and Single Disbursement', will facilitate taxpayers to file refund application online and help the tax officers to process the application there itself. All communications between the taxpayers and the tax officers will also be online.

[Source- The Hindu Business Line]

#### **Notifications**

##### **Notification No. 36/2019- Central Tax, dated. 20 August, 2019**

Seeks to extend the date from which the facility of blocking and unblocking of e-way bill facility as per the provision of Rule 138E of CGST Rules, 2017 shall be brought into force to 21.11.2019.

##### **Notification No. 37/2019-Central Tax, dated. 21 August, 2019**

Last Date for filing GSTR-3B for the month of July, 2019.

- Extended to 20th September, 2019 for floods effected districts to Bihar, Gujarat, Kerala, Karnataka, Maharashtra, Odisha and Uttarakhand.
- Extended to 20th September, 2019 for registered persons whose principal place of business is in the State of Jammu and Kashmir.

##### **Notification No. 38/2019 – Central Tax dated 31st August, 2019**

The declaration in FORM GST ITC-04 of the CGST rules, in respect of goods dispatched to a job worker or received from a job worker, during the period from July, 2017 to June, 2019 has now been scrapped.

##### **Notification No. 39/2019 – Central Tax dated 31st August, 2019**

Following sub-section 8A inserted in section 54 of the CGST Act, 2019 “(8A) The Government may disburse the refund of the State tax in such manner as may be prescribed. It shall come into force w.e.f 1st September, 2019 .

##### **Notification No. 40/2019 – Central Tax dated 31st August, 2019**

Last date for filing GSTR-7 ( TDS return under section 51 read with section 39(3) of the CGST Act, 2017 and rule 66 of the CGST rules, 2017) for the period for the months of October, 2018 to July, 2019 extended to 20th September, 2019 for the flood effected districts of seven states and Jammu and Kashmir.

##### **Notification No. 41/2019 – Central Tax dated 31st August, 2019**

Seeks to waive the late fees in certain cases (Flood effected districts of seven states and Jammu & Kashmir) for the month of July, 2019 for FORM GSTR-1 and GSTR-6 provided the said returns are furnished by 20.09.2019.

##### **Corrigendum issued on 30th August 2019 for the N/N 03/2019-Central Tax (Rate) (dated 29-March, 2019)**

It says that if in case of reversal of GST arise while adopting new scheme by builders/developers, then the same will be reversed by using FORM GST DRC- 03 (replaced by FORM GST ITC- 03)

##### **Order No. 7/2019-Central Tax dated 26th August, 2019**

Last Date for filing of Annual return /Reconciliation Statement for the period from the 1st July, 2017 to 31st March, 2018 in FORMs GSTR-9, GSTR-9A and GSTR-9C Extended to 30th November, 2019.



**Notification No. 14/2019 – Integrated Tax (Rate)/ Central Tax (Rate)/ Union Territory Tax (Rate) dated 30th September, 2019**

Seeks to amend notification No 1/2017- Integrated Tax/ Central Tax (Rate)/ Union territory Tax (Rate) dated 28.6.2017 so as to specify effective IGST rates for specified goods, to give effect to the recommendations of the GST Council in its 37th meeting dated 20.09.2019.

**GST rates reduction, -**

- a) 18% to 12% on parts of Slide Fasteners
- b) 18% to 5% on Marine Fuel 0.5% (FO)
- c) 12% to 5% on Wet Grinders (consisting stone as a grinder

**GST rates have been recommended to be increased from, -**

- a) 5% to 12% on goods, falling under chapter 86 of tariff like railway wagons, rolling stock (without refund of Accumulated ITC). This is to address the concern of ITC accumulation with suppliers of these goods.
- b) 18% to 28% +12% compensation cess on caffeinated Beverages.

**Notification No. 15/2019 – Integrated Tax (Rate)/ Central Tax (Rate)/ Union Territory Tax (Rate) dated 30th September, 2019**

Seeks to amend notification No 2/2017- Integrated Tax (Rate)/ Central Tax (Rate)/ Union territory Tax (Rate) dated 28.6.2017 to grant exemption to dried tamarind and cups, plates made of leaves, bark and flowers of plants.

**Notification No. 16/2019 – Integrated Tax (Rate)/ Central Tax (Rate)/ Union Territory Tax (Rate) dated 30th September, 2019**

Seeks to amend notification No 3/2017- Integrated Tax (Rate)/ Central Tax (Rate)/ Union territory Tax (Rate) dated 28.6.2017 so as to extend concessional IGST/ CGST/ UTGST rates to specified projects under HELP/OALP, and other changes

**Notification No. 17/2019 – Integrated Tax (Rate)/ Central Tax (Rate)/ Union Territory Tax (Rate) dated 30th September, 2019**

Seeks to amend notification No 27/2018- Integrated Tax (Rate)/ Central Tax (Rate)/ Union territory Tax (Rate) dated 31.12.2018 so as to exempt IGST/ CGST/ UTGST on supplies of silver and platinum by nominated agencies to registered persons.

**Notification No. 18/2019 – Central Tax (Rate)/ Union Territory Tax (Rate) dated 30th September, 2019**

Seeks to amend notification No 2/2019- Central Tax (Rate)/ Union territory Tax (Rate) dated 7.3.2019 so as to exclude manufacturers of aerated waters from the purview of composition scheme.

**Notification No. 18/2019 – Integrated Tax (Rate) and Notification No. 19/2019 – Central Tax (Rate)/ Union Territory Tax (Rate) dated 30th September, 2019**

Seeks to exempt supply of goods for specified projects under FAO.

**Notification No. 19/2019 – Integrated Tax (Rate) and Notification No. 20/2019 – Central Tax (Rate)/ Union Territory Tax (Rate) dated 30th September, 2019**

Seeks to amend notification No. 08/2017- Integrated Tax (Rate)/ Central Tax (Rate)/ Union territory Tax (Rate) so as to notify GST rates of various services as recommended by GST Council in its 37th meeting held on 20.09.2019.

**To reduce the rate of GST on hotel accommodation service as below: –**

Transaction Value per Unit (Rs) per day GST

Rs 1000 and less– Nil

Rs 1001 to Rs 7500 – 12%

Rs 7501 and more. - 18%

To reduce rate of GST on outdoor catering services other than in premises having daily tariff of unit of accommodation of Rs 7501 from present 18% with ITC to 5% without ITC. The rate shall be mandatory for all kinds of catering. Catering in premises with daily tariff of unit of accommodation is Rs 7501 and above shall remain at 18% with ITC.

**Notification No. 20/2019 – Integrated Tax (Rate) and Notification No. 21/2019 – Central Tax (Rate)/ Union Territory Tax (Rate) dated 30th September, 2019**

Seeks to amend notification No. 09/2017- Integrated Tax (Rate), notification No. 12/2017- Central Tax (Rate), notification No. 12/2017- Union Territory Tax (Rate) so as exempt certain services as recommended by GST Council in its 37th meeting held on 20.09.2019.

**Exemptions from GST/IGST on:-**

1. Supply of goods and services to FIFA and other specified persons for organizing the Under-17 Women's Football World Cup in India.
2. To exempt prospectively services by way of storage or warehousing Miscellaneous pulses, fruits, nuts and vegetables, spices, copra, sugarcane, jaggery, raw vegetable fibers such as cotton, flax, jute etc., indigo, unmanufactured tobacco, betel leaves, tendu leaves, rice, coffee and tea.

**Notification No. 21/2019 – Integrated Tax (Rate) and Notification No. 22/2019 – Central Tax (Rate)/ Union Territory Tax (Rate) dated 30th September, 2019**

Seeks to amend notification No. 10/2017- Integrated Tax (Rate), notification No. 13/2017- Central Tax (Rate), notification No. 13/2017- Union Territory Tax (Rate) so as notify certain services under reverse charge mechanism (RCM) as recommended by GST Council in its 37th meeting held on 20.09.2019

1. To allow payment of GST on securities lending service under reverse charge mechanism (RCM) at the merit rate of 18%.
2. To allow RCM to suppliers paying GST @ 5% on renting of vehicles, from registered person other than body corporate (LLP, proprietorship) when services provided to body corporate entities.

**Notification No. 22/2019 – Integrated Tax (Rate) and Notification No. 23/2019 – Central Tax**

**(Rate)/ Union Territory Tax (Rate) dated 30th September, 2019**

Seeks to amend notification No. 04/2018 - Integrated Tax (Rate)/ Central Tax (Rate)/ Union territory Tax (Rate), dated the 25th January, 2018, by adding an explanation on the applicability of provisions related to supply of development rights.

**Notification No. 23/2019 - Integrated Tax (Rate) and Notification No. 24/2019 - Central Tax (Rate)/ Union Territory Tax (Rate) dated 30th September, 2019**

Seeks to amend notification No. 07/2019 - Integrated Tax (Rate)/ Central Tax (Rate)/ Union territory Tax (Rate), dated the 29th March, 2019 by amending the entry related to cement.

**Notification No. 24/2019 - Integrated Tax (Rate) and Notification No. 25 /2019 - Central Tax (Rate)/ Union Territory Tax (Rate) dated 30th September, 2019**

Seeks to notify the grant of alcoholic liquor licence neither a supply of goods nor a supply of service as per Section 20(i) of IGST Act, Section 21(i) of UTGST Act read with Section 7(2) of CGST Act.

**Notification No. 42/2019-Central Tax ,dated 24-09-2019**

Seeks to amend notification No 14/2019- Central Tax dated 7.3.2019 so as to exclude manufacturers of aerated waters from the purview of composition scheme.

**Notification No. 43/2019-Central Tax, dated 30-09-2019**

Seeks to bring rules 10, 11, 12 and 26 of the CGST (Fourth Amendment) Rules, 2019 in to force.

**Notification No. 04/2019-Integrated Tax, dated 30-09-2019**

Seeks to notify the place of supply of R&D services related to pharmaceutical sector as per Section 13(13) of IGST Act, as recommended by GST Council in its 37th meeting held on 20.09.2019.

**R&D services provided by Indian pharma companies to Foreign Service recipients, as the place of effective use and enjoyment of a service i.e. location of the service recipient and section 13(3)(a) of IGST Act, 2017 is not applicable for determining the place of supply in such cases.**

**Notification No. 02/2019-Compensation Cess (Rate),dt. 30-09-2019**

Seeks to amend notification No. 1/2017-Compensation Cess (Rate), dated 28.6.2017 on the recommendations of the GST Council in its 37th meeting dated 20.09.2019.

**Notification No. 03/2019-Compensation Cess (Rate),dt. 30-09-2019**

Seeks to disallow the refund of compensation cess in case of inverted duty structure for tobacco and manufactured tobacco substitutes.

**Case law**

**Granting stay for the recovery of late fees for late filing of Form GSTR-3B.**

**Aap & Co v. Union of India R/Special Civil Application No. 14624 OF 2019 108 taxmann.com 590 (H.C. Gujarat)**

Granting stay on recovery proceedings for the recovery of late fees for late filing of Form GSTR-3B for the period 1st July 2017 to 30th September 2018 for which returns are furnished between 1st July, 2017 to 21st December.

**GST is leviable on Mobilization advance for works contract**

**Siemens Ltd Order No. 18/WBAAR/2019-20 & Case No. 22 of 2019 108 taxmann.com 460 (AAR - WEST BENGAL)**

Mobilization advance for works contract is meant specifically for inducing contractor to spend for provisioning works contract service, hence GST is leviable thereon accordingly.

**Yellow peas, imported from a foreign land not eligible for exemption.**

**TP Roy Chowdhury & Co. (P.) Ltd Order No. 17/WBAAR/2019-20 & Case No. 23 of 2019 108 taxmann.com 459 (AAR - WEST BENGAL)**

Applicant supplied service of loading, unloading, etc., after cargo of yellow peas, imported from a foreign land, reached port of entry, such imported yellow peas were not 'agricultural produce' and services by way of handing of it was not eligible for exemption under Sl No. 54(e) of Notification No. 12/2017 - Central Tax (Rate) dated 28-6-2017 (corresponding State Notification No. 1136 - FT dated 28-6-2017), as amended from time.

**Printing business is a composite contract and treated as supply of services**

**Macro Media Digital Imaging (P.) Ltd., Order No. 15/WBAAR/2019-20 108 taxmann.com 463 (AAR - West Bengal)**

Applicant, engaged in business of printing of trade advertisement material, prints content provided by recipient on base of polyvinyl chloride cloth, paper, etc., and provides printing ink and base material, applicant's supply is a composite contract, a transaction involving both services and transfer of property in goods, and two are inseparable in execution of contract. The goods supplied having no other use other than displaying printed matter, is ancillary to the principal supply of printing

**Appellate Authority could entertain appeal only a period of 30 days after expiry of initial period**

**Nuetech Solar Systems (P.) Ltd Order No. KAR/AAAR/03/2019-20 108 taxmann.com 260 (AAAR-Karnataka)**

Appellate Authority being a creature of statute is empowered to condone a delay of only a period of 30 days after expiry of initial period for filing appeal, and to hold that Appellate Authority could entertain appeal beyond extended period would render phrase 'not exceeding thirty days' wholly otiose and no principle of interpretation would justify such a result .

**'Power Bank' is classifiable as an accumulator under Chapter Heading 8507.**

**Xiaomi Technology India (P.) Ltd ORDER NO. KAR/AAAR/02/2019-20 108 taxmann.com 259 (AAAR-Karnataka)**

Where appellant Xiaomi is trading 'Power Bank' whose principal function is to store electric energy and supply when required, power bank traded by appellant is not static convertor but is classifiable as an accumulator under Chapter Heading 8507.

**Wrong Reporting of Input in GSTR-3B permitted to rectify the above statements.**

**Panduranga Stone Crushers v. Union of India.**

**W.P. NO. 8662 of 2019 108 taxmann.com 511 (H.C. Andhra Pradesh)**

Petitioner submitted GSTR-3B returns through GST portal but while claiming IGST input, petitioner had inadvertently and by mistake reported IGST input tax credit in a column relating to import of goods and services instead of placing that particular amount viz., IGST input tax credit in all other ITC column and, therefore, petitioner, sought for permission to rectify mistake that had crept in GSTR-3B returns, by interim order petitioner was permitted to rectify GSTR-3B statements for months of August and December, 2017 and January and February, 2018 manually subject to outcome of writ petition. The petitioner is permitted to rectify the above statements.

**Rotary Club collects fees from their members liable to pay GST**

**Rotary Club of Mumbai Nariman Point Order No. GST/ARA/142/2018-19/B-88 108 taxmann.com 212 (AAR - Maharashtra)**

Applicant Rotary Club collects fees from their members in order to facilitate their meetings and for administrative purposes, contributions from members in Administration Account, recovered for expending same for weekly and other meetings and other petty administrative expenses incurred including expenses for location and light refreshments, amounts to or results in a supply, within meaning of supply and will be classified as supply of services for which applicant is liable to pay GST.

**Input tax benefit not pass to buyers attract Amount of Rs.3, 69, 26,963 with 18 % Interest.**

**NATIONAL ANTI-PROFITEERING AUTHORITY Gaurav Gulativ.Paramount Propbuilt (P.) Ltd. case no. 47 of 2019 109 taxmann.com 507 (NAA)**

Applicant, who booked a flat with respondent in his project and was allotted Apartment alleging that respondent had not passed on benefit of ITC to him as per provisions of section 171(1) of the CGST Act, 2017 since respondent had availed ITC benefit till date of issue of Completion Certificate of project and hence it had availed additional benefit of ITC, but has denied benefit of ITC to buyers of flats being constructed by him in his present project. The Authority orders to pay Rs 3, 69, 26,963 to 1153 buyers with 18 % interest.

**File declaration in form GST TRAN-1 and GST TRAN-2 respectively to enable writ-applicants to claim transitional credit of eligible duties**

**HIGH COURT OF GUJARAT Siddharth Enterprises v. Nodal Officer R/Special Civil Application Nos. 5758, 5759, 5760, 5762 of 2019 109 taxmann.com 62 (Gujarat)**

Respondents for being permitted to file declaration in form GST TRAN-1 and GST TRAN-2 respectively to enable writ-applicants to claim transitional credit of eligible duties in respect of inputs held in stock on appointed day in terms of section 140(3) of the Central Goods and Services Tax Act, 2017 and it was further declared that due date contemplated under Rule 117 of CGST Rules for purposes of claiming transitional credit is procedural in nature and, thus, should not be construed as a mandatory provision

**Maintenance of health facilities with 100 % participation, by way of equity and control of Government eligible for exemption**

**AUTHORITY FOR ADVANCE RULINGS, WEST BENGAL Order no. 22/WBAAR/2019-20&Case No. 29 of 2019 109 taxmann.com 155 (AAR-WEST BENGAL)**

The Applicant is a governmental authority as defined under para no. Z(zf) of Notification No 12t201TCT(Rate) dated 28.06.2017 and State Notification-1136-FT dated 28.06.2017, as amended from time to time, and eligible for exemption under Sl No. 5 of the said notifications on supply of any service in relation to establishment and maintenance of hospitals and similar health facilities.

**Manual cleaning, housekeeping, security services etc. to various Central Government and State Government hospitals is not exempt.**

**AUTHORITY FOR ADVANCE RULINGS, WEST BENGAL Altabur Rahaman Mollah, In re Order no. 21/wbaar/2019-20&case no. 30 of 2019 109 taxmann.com 154 (AAR-WEST BENGAL)**

Applicant is supplying facility management services like mechanized and manual cleaning, housekeeping, security services etc. to various Central Government and State Government hospitals, cleaning of hospital premises is not classified under 'Sanitation or similar service' under SAC 99945, and, therefore benefit of exemption from payment of GST is not available to applicant under Notification No. 12/2017-Central Tax (Rate) dated 28-6-2017 for supply of security services and cleaning and sweeping services.

**Services of Court Receiver are activities or transactions which shall be treated neither as a supply of goods nor a supply of services.**

**HIGH COURT OF BOMBAY Bai Mamubai Trustv.Suchitra 109 taxmann.com 300 (Bombay)**

Court Receiver implements orders of Court and functions under supervision and direction of Court. Thus, services of Court Receiver are activities or transactions which shall be treated neither as a supply of goods nor a supply of services. For these reasons, GST cannot be levied or recovered on services provided by Court Receiver.

**No abatement provided on value of Preferential Location**

**APPELLATE AUTHORITY FOR ADVANCE RULING, WEST BENGAL [2019] 110 taxmann.com 34 (AAR-WEST BENGAL) APPEAL CASE NO. 09/WBAAAR/APPEAL/2019**

No abatement prescribed for construction service under Sl. No. 3(i) read with paragraph 2 of Notification No.11/2017-CT (Rate), dated 28-6-2017 (corresponding State Notification No. 1135-FT, dated 28-6-2017) as amended from time to time is applicable on value of Preferential Location Service realised separately from buyers

**Contracts with Government of Tamilnadu and Government of Mizoram for providing services as a Financial Management Specialist and Institutional Development Specialist, exempt under GST**

**AUTHORITY FOR ADVANCE RULINGS, WEST BENGAL MS. SUSMITA BHATTACHARYA AND PARTHASARATHI DEY, MEMBER [2019] 109 taxmann.com 430 (AAR-WEST BENGAL)**

Applicant has entered into contracts with Government of Tamilnadu and Government of Mizoram for providing services as a Financial Management Specialist and Institutional Development Specialist, respectively. Services are in relation to functions such as irrigation, water management and watershed development in Tamilnadu, and development of roads and bridges in Mizoram. Projects involve functions entrusted to a panchayat or a Municipality under Article 243G or 243W of Constitution. Thus, applicant's service to State Governments is, eligible for exemption under Sl. No. 3 of Notification No. 9/2017 - Integrated Tax (Rate) dated 28-6-2017, as amended from time to time.

**Client accommodation in hotels is taxable at 18 per cent**

**[2019] 109 taxmann.com 439 (AAR-WEST BENGAL) AUTHORITY FOR ADVANCE RULINGS, WEST BENGAL Golden Vacations Tours & Travels, In re**

Where applicant arranges for client accommodation in hotels and is thus, supplying a service classifiable under SAC 998552, it is taxable at 18 per cent (CGST + SGST) under Sl. No. 23(iii) of Notification No. 11/2017 - CT (Rate) dated 28-6-2017.

**RERA  
HARYANA  
News**

**Haryana Government increases FAR of residential plots in licensed colonies**

The government of Haryana has increased the FAR from existing 1.98 to 2.64 for residential plots of size 75 sq m till 250 sq m and 2.40 for residential plots of size 251 sq m till more than 500 sq m. FAR is the ratio of a building's total floor area (gross floor area) to the size of the piece of land upon which it is built. The Haryana Building Code, 2016, provides that additional FAR is allowed on payment of charges as approved by the government from time to time. Developers have welcomed the move

as with increased FAR the plot owner can construct around 75% to 80% of the area. [Source: ET]

**Buyers demand control of the project to complete it**

Homebuyers of CHD Golf Avenue, a residential project in Gurugram have alleged that the possession was promised in 2016 but the project is only 70% complete till date and that the developer has collected Rs 35 crore as external development charge (EDC) from them but deposited only Rs 11.5 crore to DTCP. The buyers have demanded recovery of the remaining amount from the funds of the builder to complete the project. District Town Planner has assured that audit of developer's accounts will be done soon. [Source: ET]

**PUNJAB & CHANDIGARH**

**News**

**Unregistered projects cannot escape RERA: Real Estate Appellate Tribunal, Punjab**

The Real Estate Appellate Tribunal, Punjab, has ruled that provisions of the Real Estate Regulatory Authority (RERA) are also applicable on promoters of projects that are not registered with RERA.

Quashing an order passed by the Real Estate Regulatory Authority, Punjab, that had held complaints against a promoter in Zirakpur as not maintainable, the Tribunal's Bench comprising Justice Arun Chaudhari and SK Sharma observed: "Not a single provision of the Act makes out any such classification or distinction about projects that are registered or not."

"To say that the regulatory authority shall be entitled to have control only over those projects, which have been registered and not over those, which have deliberately or otherwise not been registered, will be an interpretation nugatory to the object sought to be achieved for implementing the Act in letter and spirit," the Bench said.

"Pointing out the fact that the Act does not make any distinction among promoters, who have registered their projects and those who have not registered, clearly indicates that the jurisdiction of the authority will extend to all," the Tribunal held, "Otherwise the consumers connected with unregistered projects will be left high and dry and without any remedy."

"After all the Act is welfare legislation and must be interpreted in such a manner to further and advance the policy and object of the Act," the Bench said. [Source- Tribuneindia]

**Punjab RERA constitutes group to examine laws related to real estate**

Punjab's Real Estate Regulatory Authority has constituted a group to examine various laws related to real estate sector with a view to bring transparency and harmonize the real estate laws in the state.

The two-member group would examine various laws such as Punjab Regional and Town Planning and Development Act, 1995; Punjab Apartment and Property Regulation Act and Punjab Apartment Ownership Act, 1995.

"After analyzing the existing laws of the state dealing in the field of real estate, the group would submit its suggestions to make necessary modifications so that these could be harmonized with the provisions of The Real Estate (Regulation & Development) Act, 2016 (RERA)".

The amendments proposed by the group would be submitted to the government for approval.

The Housing and Urban Development Department had requested Real Estate Regulatory Authority, Punjab to form a group to take up the job of scrutinizing and examining the laws and identify necessary changes.

**Haryana government has notified The Haryana Real Estate (Regulation and Development) Amendment Rules, 2019 vide notification number Misc-862/1/83/2019/1TCP dated 12.09.2019**

Vide these amendment rules changes have been incorporated in the definition of Association of Allottees, procedure for filing complaint with the authority or the adjudicating officer, inquiry and disposal or adjudging quantum of compensation. Various applications before the authority such as application for registration of project, extension of registration of project, registration of agent, appeal to appellate tribunal were earlier required to be filed in triplicate now the words in triplicate have been omitted.

Rule 4(4) provides for deposit of seventy percent of the amount realized from allottees in a separate bank account within 3 months of the application for registration of the project. Earlier the said rule was applicable for both ongoing and new projects, now the rule has been made applicable only on ongoing projects and deduction of expenditure incurred and paid for meeting the cost of construction and the proportionate land cost of the project as provided under sub-clause (D) of clause (l) of sub-section (2) of section 4 has been permitted from the seventy percent of the amount already realized from the allottees.

**Case law**

**An unregistered project shall be considered at par with the project of which the registration has been cancelled otherwise the protection to association of allottees under section 8 will not be available to allottees**

**Sahiba and Ors vs Anil Jindal, SRS Real Infrastructure order dated 30.07.2019**

It was held that allottees of the project have formed an association (RWA in brief) and got it registered under the Haryana Registration and Regulation of Societies Act, 2012. RWA has estimated that an amount of about Rs. 6.5 crore have to be incurred to complete the project. The association having fulfilled all the tasks assigned to it by the Authority has a right to take over the project for completing it themselves and respondents were restrained for creating any third party interest in the project. The project was unregistered as promoters failed to register the complaint and violated the mandate of section 3 of the Act and section 7 was applicable which deals with revocation. The Authority in its order held that when a promoter fails to register the

project despite clearly being aware that he should do so, such projects must be treated at par with the projects of which the registration is cancelled by the Authority. Not taking this view will create an anomalous situation and would adversely jeopardize the interest of the allottees of the project of which the promoters are deliberately refusing to finish the project. Not taking such a view would also amount to saying that the protection of Section 8 is not available to the Allottees of an unregistered project. In the considered view of this Authority an unregistered project shall be considered at par with the project of which the registration has been cancelled. Having said so, now the protection of Section 8 must be granted to the allottees of the present project of the respondent.

**The Adjudicating Authority is the only forum to adjudicate the matter of refund, interest and compensation**

**Vijay Pal Singh & Ors. vs M/s Ansal Housing and Construction Limited, Appeal No. 459 of 2019 in its order dated 22.07.2019**

It was held that only Adjudicating officer as per the Act and Rules can pass order of refund along with interest. The Ld. Authority in its order directed to the respondent to pay delay interest at the prescribed rate i.e. @ 10.75% for every month of delay from the due date of possession i.e. 18.01.2018 till offer of possession. The appellants/complainants filed the appeal and sought refund of the entire amount in the complaint before the Ld. Authority and the same relief has been sought by him in the present Appeal before the Tribunal. Relying on Sameer Mahawar Vs. MG Housing Pvt. Ltd. the Tribunal held that Ld. Authority had no jurisdiction to entertain the complaint filed by the appellants allottees wherein they have claimed the relief of refund alongwith interest. The Adjudicating Officer, who is the only forum to entertain the complaint, will decide this question afresh, in accordance with law.

**The complainants will be entitled to carry out measurements at the time of taking the possession. and such measurements are found to be at variance with the measurements done by the respondent, the complainants will have a right to approach this Authority again to challenge the measurements**

**Shailesh Gupta & Ors. Vs Puri Construcion Pvt. Ltd. in its order dated 06.08.2019**

It was held that it will remain a right of the complainants to challenge the actual measurements in case they are found to be incorrect. In the case it was contended by complainant the as per ATS super area is 1895 sq.ft. but only 1010 sq. ft was given by the respondent. In the calculation sheet submitted by the respondent, it has been stated that the unit's covered area is 1194.481 sq. fts. and balcony area is 233.364 sq. fts. totalling 1427.845 sq. fts. The respondent further submits that the rest of the super area is comprised of Circulation area (288.040 sq. fts.), Project Services area (168.655 sq. fts.) and Club (24.635 sq. fts.) which totals 1909.17

sq. fts. whereas the respondent is charging for only 1895 sq. fts. as per the agreement. The complaint was disposed but it was observed that the complainants will be entitled to carry out measurements at the time of taking the possession. The respondent shall allow the complainants to carry out measurements of the apartments as well as common areas and such measurements are found to be at variance with the measurements done by the respondent, the complainants will have a right to approach this Authority again to challenge the measurements.

## KARNATAKA

### News

#### **2 lakh houses to be built for the poor, in Bengaluru by Karnataka government**

In line with prime minister Narendra Modi's vision of 'Housing for All by 2022,' the Karnataka government wish to build two lacs dwelling units in Bengaluru for urban poor, and for this govt. has identified a land about 1,000 acres in Bengaluru. The govt. have decided to build 10 to 12-storey buildings in different parts of Bengaluru.

The said residential project, to be taken up by the Housing Department which would have amenities including lifts etc. It would be developed on the lines of projects taken up in Gujarat and a few other states.

The houses would be provided at subsidized rates.

[Source- Times of India]

## MAHARASHTRA

### News

#### **Slum rehab projects to be brought under Maha RERA Act: Government circular**

Now, tenants who have been facing issues due to delays in Slum Rehabilitation Authority (SRA) redevelopment schemes will have a platform to approach with their complaints.

The state government has issued a circular stating that **slum rehabilitation projects will be included in the Maharashtra Real Estate (Regulation and Development) Act, 2016.**

Now, tenants who have been facing issues due to delays in Slum Rehabilitation Authority (SRA) redevelopment schemes will have a platform to approach with their complaints. The circular, dated August 28, was issued by the state housing department.

A rehabilitation project has two components — one being rehab, in which the redeveloper has to give homes to eligible tenants living in slums. The second is the sale component, as part of which the builder sells in the market after giving homes to eligible tenants. **When the Act was implemented on May 1, 2017, in Maharashtra, builders only had to register the sale component.**

Various housing associations raised a demand that rehab components should also be registered under MahaRERA.



Shirish Deshpande, of Mumbai Grahak Panchayat Samiti, said the aim behind registering the rehab component was to give tenants the belief

that there is an authority who will take care of their homes if there are any irregularities.

The state government's move is expected to benefit over 10 lakh families. In another step aimed at easing the financial crunch in the real estate market, the circular stated, "In order to give relief to the developer, the SRA scheme will be done on phase-wise. If builder constructs 100 homes for rehab then they can take permission from SRA chief executive officer for construction of 100 sale components as well." [Source: Indian Express]

#### **Land title insurance set to be mandatory for MahaRERA registered builders**

The state housing department is set to make land title insurance mandatory for MahaRERA registered developers, for which insurers are already in talks with the regulatory authority to decide on the premium. The Real Estate (Regulation and Development) Act 2016 (RERA) mandates the purchase of title Insurance for new and ongoing projects registered with the Real Estate Regulatory Authority.

Land title insurance is a form of indemnity cover, which insures builders and customers against financial loss from defects in title to real property, among others. It had earlier failed to take off due to high pricing and lack of clarity, besides discrepancies in the government records.

[Source: ET]

#### **MahaRERA directed to form the association of allottees and initiate the revocation under section 7 of RERA 2016**

MahaRERA through its order dated 11<sup>th</sup> September 2019 directed promoter "Shree Adiraj Laxmi Builders Pvt. Ltd" (Maha RERA Reg. No. P51700013358) to enable the allottees to form association of allottees (AOA) so the decision for initiating section 7 i.e. revocation of the project may be taken by them.

Allottees of the project "Adiraj Crystal" situated at Ambarnath, Thane filed various complaints stating that the Respondent has failed to execute and register the agreements for sale, complete the Project and hand over possession. During proceeding of the case it was found/declared that the project registration has lapsed. Further, the construction work of the project could not be completed because of reasons which were beyond the promoter's control.

Authority direct the Respondent to handover the list of allottees of the said project, along with their contact details, to the Complainants within 30 days from the date of this Order, to enable the allottees to take an informed decision Pertaining to the said project and if the association of allottees may like to Proceed for revocation under Section 7/8 of the Act. The Respondent may seek the approval of the association of allottees for order under Section 7(3) of the said Act. [Source: MahaRERA]

### Case law

#### **MahaRERA asked the Association of Allottees whether to revoke the RERA Registration or not**

In the case of Milind Dhande and 9 other Allottees Versus Housing Development and Infrastructure Ltd. (MahaRERA Regn. No. P5180000780), Maha

RERA ordered the Respondent to handover the list of allottees of the project “**Whispering Towers EFG Wings**” to Association of allottees so that decision regarding revocation of registration under Section 7 of the RERA Act can be taken by them.

#### **Facts**

1. The Complainants have booked apartments in the project '**Whispering Towers EFG Wings**' situated at Kurla, Mumbai via registered agreements for sale. The Complainants have alleged that the date of possession as stipulated by the said agreements has already been lapsed. Therefore, they prayed that since the Respondent has failed to hand over the possession of the apartments within the stipulated period, they be directed to pay interest, on delay or refund the amounts paid as per the provisions of section 18 of the Real Estate (Regulation and Development) Act, 2016.
2. The Authorized representative for the Respondent explained that the construction work of the project could not be completed because of reasons which were beyond the Respondent's control. Specifically, he submitted that the due to financial constraints and unpaid dues of the Planning Authority and various Banks, which has extended project loans, the project has got stalled.
3. In Complaint no. CC00600000056289, the Respondent had submitted that he is in advanced talks with another promoter/ financier and commits to revive and restart the project by April, 2019 and complete the project with occupation certificate by December 30, 2020.
4. Since the Respondent has failed to revive the project by April, 2019 as committed, the association of Allottees may be proceeded with revocation of registration of the project under Section 7 of the RERA Act.
5. In view of the above facts, the Respondent is directed to handover the list of Allottees of the said project, with contact details, to the Complainants within 30 days from the date of this Order, to enable the Allottees to take a decision pertaining to the said project and whether the association of Allottees may like to proceed with revocation of registration under Section 7 of the Act or not.
6. The Respondent may seek the approval of the association of allottees for order under Section 7(3) of the said Act, as per MahaRERA Order no 7/ 2019 dated February 8, 2019 on Revocation of Registration of Project for reviving and completing the said project. [Source: MahaRERA]

**Statutory payments like stamp duty, VAT, service tax are to be deducted and flat purchaser is not entitled for the same**

**Bhoomi And Arcade Associates vs Alistair Gomes, Appeal No. AT 005000010880**

Ld. Mumbai Rera Authority ordered the promoter to refund the entire amount of Rs.3,40,491/- expended by the complainant with regard to the ancillary expenses borne towards registration, stamp duty, processing fees, and finance company charge. The Mumbai RERA Tribunal overruling the order of the Authority held that in the proposition

settled in the case of Ashutosh Suresh Bagh v/s. The Member & Adjudicating Officer & Ors. and conjunctive reading of clauses 6 and 10 of the Agreement entered between the parties, it is clear that statutory payments like stamp duty, VAT, service tax are to be deducted and flat purchaser is not entitled for the same.

#### **UTTAR PRADESH**

##### **News**

- UPRERA Chairman Shri Rajeev Kumar, Secretary Abrar Ahmad other members of Authority had a meeting with PSU's and Private Bank Senior Officials **regarding Escrow Account Mechanism.** [Source: ET Reality]
- Chairman issued a statement regarding “Builders current process of maintaining collection account is wrong.” [Source: ET Reality]
- UPRERA seizes bank accounts and assets of Lucknow- based builder
- Competition Commission of India slaps 14 crores fine on **Jaiprakash Associates** for one of its Noida based project.
- Soon UPRERA will introduce a **help desk** to solve out the queries of public.
- UPRERA directs Ajnara, Antriksh, Gardenia & Sunworld to submit project completion plan.
- More than 100 shop owners of IHC submitted a detailed project report to the **UP-RERA**. The owners want to take-over the project and construct it themselves. The UPRERA has ordered the builder of **Indirapuram Habitat Centre** to provide a list of allottees in phase-1 for registration of sub-lease deed while the IHC buyers' association has been asked to give a representation for attachment of rent that the builder is receiving from tenants in the project. [Source: ET Reality]
- The UPRERA has issued a notice to the Ghaziabad Development Authority over its failure to appear before the regulator in a case related to Indirapuram Housing scheme for the Economically Weaker Section. The GDA, however, says the scheme doesn't come under RERA's purview. [Source: ET Reality]
- The UP-RERA has identified around **100 'ghost' realty projects**, which builders have 'abandoned' and thus homebuyers and investors are left to suffer with no hope in sight. The UP-RERA has asked the Noida, Greater Noida and Yamuna Expressway Industrial Development authorities to identify more such projects, wherein homebuyers are suffering because the deadline to approve maps of these realty projects' building maps (five years) has elapsed. [Source: ET Reality]
- RERA to the tune of around **Rs. 300 crore**. Officials have recovered around **Rs. 31 crore till now, of which Rs. 11 crore** is to go to the RERA's recovery amount. The administration has also held a meeting with all the tehsildars to speed up the procedure of recovering money from builders by issuing recovery notices so the money can be returned to flat owners.
- UPRERA to launch system **single window soon**. Citizens and developers would be able to get maps

approved, lodge complaints and, secure progress reports and no-objection certificates for projects.

[Source: ET Reality]

- The National Company Law Tribunal (NCLT) Delhi issued a show-cause notice to **Ansal Hi-Tech Township** asking why the corporate insolvency resolution process be not initiated against them. The order relates to Sushant Megapolis, a project situated in Greater Noida. The project, launched in 2007, offered a mix of apartments, villas and residential plots.

[Source: ET Reality]

- The NCLT has initiated insolvency proceedings against NCR-based real estate firm Today Homes Noida Ltd on a petition filed by a group of homebuyers. The tribunal rejected the submission of the real estate firm that it has got four-year extension from UPRERA to complete the project “Ridge Residency housing”, **saying that Insolvency and Bankruptcy Code (IBC) overrides provisions under the realty law.**

[Source: ET Reality]

- UPRERA has moved out of two stalled projects in noida namely **Airwil Intellicity in Techzone 4 and Unnati Buildtech in Sector 119** which it was supposed to complete by calling in a new developer. The decision to move out of the two projects is in keeping with a **Supreme Court order, dated August 9**, which ruled that if there is an overlap of proceedings by Rera and those governed by the Insolvency and Bankruptcy Code, the latter will hold.

[Source: ET Reality]

- The **Supreme Court** directed its registry to release Rs 7.16 crore to the NBCC for completion of the stalled **projects of the Amrapali group**. The bench also directed that to give a copy of the forensic audit report to the Enforcement Directorate, Delhi Police and the Institute of Chartered Accountants in India (ICAI) for taking appropriate action against Amrapali directors and auditors for siphoning off over Rs 3,000 crore of home buyers' money.

[Source: ET Reality]

- Sixteen cases of conflict between builders and buyers over flat possession were taken up for hearing during a **conciliation meeting** of the Uttar Pradesh RERA on August 28, and amicable solutions were reached in 11 of them. In total, seven cases of Supertech, one each from APV Realty, Gaursons Promoters, Strategic Developers and Mahagun were amicably resolved.

[Source: ET Reality]

- The Noida administration invoked the **National Security Act (NSA)** against a builder who had illegally constructed a multi-storey building which collapsed last year, leaving nine people dead. This is the first case in Uttar Pradesh in which a builder has been detained under the stringent NSA, **which prohibits bail to an accused for 12 months**, subject to judicial review.

[Source: ET Reality]

- The National Company Law Tribunal (NCLT) has initiated corporate insolvency resolution process against **Three C Projects for its Lotus Zing Project**. This project was started in the year 2011 and was to be delivered in 33 months from the date of agreement but the builder failed to do so.

[Source:- ET Reality]

- A list of 6,000 aggrieved homebuyers of six different Amrapali projects was on Friday submitted to the Supreme Court on its direction by their counsel M L Lahoty. On August 26, a bench headed by Justice Arun Mishra asked Lahoty to furnish project-wise details of the people, who are presently residing in various apartments of the projects of embattled Amrapali Group.

- UPRERA seized **Rohtas Building office in Lucknow** allegedly over unpaid arrears of RERA and labourers. Rohtas Building is situated at Raja Ram Mohan Roy Marg, Lucknow in Uttar Pradesh. The Rohtas builders had arrears worth Rs 63 lakh and 98 thousand against RERA and labourers and this amount was not recovered even after issuing them notices several times.

[Source: ET Reality]

- UPRERA has begun an audit of all construction sites the belong to the **3C Company, whose subsidiary Granite Gate — the firm behind the Lotus brand** of projects — is facing insolvency proceedings at the NCLT. UPRERA started ground inspections of all 3C projects to see if construction work was in progress at the sites.

[Source:- ET Reality]

#### **Summary of notification on completion certificate (C/C) or Occupancy Certificate (O/C) issued by UP-RERA**

Notification No. 8208/UP-RERA/20<sup>th</sup> Meeting/Office Order/2019-20

Issue Date: 16<sup>th</sup> September 2019

For protecting the rights of allottees and to fulfil the objective of giving peaceful possession to the allottees of their allotted units, UP-RERA on 04<sup>th</sup> September 2019 in the annual meeting decided as follows:

1. If promoter completes electricity supply, water supply, sewer disposal, water drainage, work related to internal routes and applied for completion certificate with the competent officer along with below mentioned documents and competent officer doesn't refuse the said application within 7 (seven) working days and inform the applicant within 8 (eight) working days about the said refusal, then it shall be deemed that competent authority has accepted the said application :

- a) Electrical safety certificate
- b) Fire safety certificate
- c) Structural engineer certificate
- d) Lift installation safety/safety certificate

2. In such scenario RERA authority may **order promoters as well as allottees to execute sale/lease/sub-lease deed** and offer/take the possession. In case of Noida/Greater Noida/Yamuna Express Way or likewise authorities where there is a system to execute tripartite sub-lease deed, RERA Authority may order the promoter to execute **registered agreement for sale** and offer the possession of allotted unit to allottee.

[Source: UP RERA]



## **Deregistration of another project by UPRERA Authority**

The Uttar Pradesh Real Estate Regulatory Authority (UP-RERA) has showcased the picture of the promoter PSA Impex in the defaulters' list on its website and de-registered its residential project Sampada Livia situated in Greater Noida and other RERA authorities have also been informed about the de-registration of the project.

It has also suspended builder's bank account and has constituted a committee under Balwinder Kumar, member, UP-RERA to plan the completion of the project.

Sampada Livia/Alturoo Residency is a Rs 220 crore project which has around 750 units. Total number of home buyers was 355, as per Currie & Brown's report.

Over 20 home buyers had approached the authority stating that the project is stuck for the last two years and there has been mismanagement of funds. The project was to be handed over in 2017.

The builder failed to upload the quarterly status of the project on the authority's website and didn't provide complete information. Based on this, the authority carried out physical inspection of the project in February 2019.

The report found that while the project is listed as Sampada Livia on UP-RERA's website, it was named Alturoo Residency at the site. The project plan was not uploaded on the website. It also found that only 10% project has been completed and no construction has taken place for the last two years. On authority's order Currie & Brown conducted audit of the project and found that Rs 47 crore received from the home buyers have been diverted by the company.

In April 2019, one of the promoters informed the authority that the main promoter is in judicial custody for last 6-7 months. However they have signed a memorandum of understanding (MoU) with Rudra Buildwell Construction and plan to complete the project by 2020.

The company also presented a resolution plan according to which out of 200 home buyers, 50 home buyers have opted for refund, and 25 home buyers have opted for exchange while 125 home buyers have opted to remain in the project. It sought time to refund the home buyers.

In May 2019, the company informed that the new builder-Rudra Buildwell Construction has allocated Rs 10 crore for the initial construction of the project and it plans to complete two towers by March 2020 and other two towers by October 2020.

UP-RERA however issued a show-cause notice to the builder asking details of total number of home buyers, those who have opted for exchange, those who have opted for refund and those who have opted to stay with the project. It also demanded the construction plan and cash-flow plan to complete the project.

PSA Impex in its explanation informed that Rudra Buildwell Construction bought majority share in the company.

The authority however found that this violated section 15 of the RERA Act. It hence decided that

PSA Impex has violated Section 4 and 11 of RERA. It has failed to complete the project and funds have been diverted. [Source: ET]

## **RAJASTHAN**

### **News**

#### **Jaipur Municipal Corporation to demolish over 140 illegal buildings in nine months**

Following an order by Rajasthan High Court, the Jaipur Municipal Corporation has divided the buildings violating the by-laws into three categories including illegal construction, partially illegal and constructions having minor irregularities. The illegal structures will be demolished in three phases over nine months. In the first phase 19 illegal structures will be razed in three months followed by razing of 12 partially illegal buildings in the second phase in three months and the rest 112 illegal buildings will be taken up in the last phase.

### **Case law**

**The Authority needs to strike a balance in its approach to cases of withdrawal from a project so as to balance the interest of individual allottee who wants to withdraw from the project for whatever reason and the larger interest of the project and the allottees in general who have and are maintaining a stake in the project getting completed.**

#### **Ravi Kant Gupta & ors. GRJ Distributors and Developers Pvt. Ltd. & Ors. order dated 31.05.2019**

The non-complainant was to deliver possession of the allotted flats in its project 'Avalon Royal Park', Bhiwadi, within 42 months from the date of agreement, with a grace period of 6 months for circumstances beyond its control. The non-complainant has failed to deliver possession of the flats within the period so specified in the agreement and contended that that the project is under construction and process for offer of possession will be started within the stipulated time frame, i.e., by 30.12.2020, as mentioned in the RERA registration. The Authority while hearing the refund relief of the Allottees who wanted to cancel the booking observed that the critical issue is whether the allottees can opt out of the project at any stage; and, if so, what will be the amount of relief. If a number of allottees withdraw from a project and demand their full money with interest, then there is a high likelihood of the entire project becoming unviable, with financial liquidity of the promoter company getting adversely affected mid-stream. This, in turn, may affect the interest of all other allottees who have remained in the project and still desire delivery of the property. At the same time, there is inherent right of an allottee to exit from the project, which may be due to any reasons. What is important is that this exit option should not become more lucrative than continuing with the project and thereby open a flood gate of withdrawals and jeopardise the whole project. It is due to this unintended and undesirable consequence that it is important for the Authority to carefully consider the grant of such relief.

The Authority needs to strike a balance in its approach to cases of withdrawal from a project so

as to balance the interest of individual allottee who wants to withdraw from the project for whatever reason and the larger interest of the project and the allottees in general who have and are maintaining a stake in the project getting completed.

## GUJARAT

### News

#### **Change in Registration Fees:**

The project registration fees under RERA in the state of Gujarat has been amended vide Gujarat Real Estate (Regulation and Development) (General) (Amendment) Rules, 2019 with effect from 31.08.2019. The revised project registration fees are as follows:

Type of Project	Fees up to 31.08.2019	Fees after 31.08.2019
Group Housing Project	Area of land ≤ 1,000 sqm	Rs 5 per sqm
	Area of land > 1,000 sqm	Rs 10 per sqm
	Maximum fees	Rs 5,00,000
Mixed development (Residential and Commercial) project	Area of land ≤ 1,000 sqm	Rs 10 per sqm
	Area of land > 1,000 sqm	Rs 15 per sqm
	Maximum fees	Rs 7,00,000
Commercial projects	Area of land ≤ 1,000 sqm	Rs 20 per sqm
	Area of land > 1,000 sqm	Rs 25 per sqm
	Maximum fees	Rs 10,00,000
Plotted development projects	Rs 5 per sqm	Rs 10 per sqm of land proposed to be developed
	Maximum fees	Rs 2,00,000
		Maximum fees

## TAMIL NADU

### News

#### **Akshaya, Sare Reality, the two builders in chennai files illegal CCs before Tamil Nadu RERA**

The issue pertains to two individual homebuyers who sought refund and compensation on their investments, as the units were not delivered to them within the agreed deadline.

Complaints has been filed by buyers against Akshaya Private Limited and Sare Reality Project Pvt. Ltd. for seeking refund of entire amount paid by buyers with compensation towards booking of flat/villa as units were not delivered to them within the agreed deadline.

In respond of complaint the above builders replied that the projects was completed till 2015 and also filed completion certificate (CC) issued by village panchayat presidents for their projects before the Tamil Nadu Real Estate Regulatory Authority

(TNRERA) to counter complaints against them and contended that project was completed before applicability of RERA Act. Though only Chennai Metropolitan Development Authority (CMDA) had powers to issue CC till April 2018, when it was extended to Directorate of Town and Country Planning (DTCP). As the projects area Thaiyur and Kolathur were falls outside the area of CMDA and comes under the ambit of Directorate of Town and Country Planning (DTCP). Therefore, the concept of CCs in these two areas kicked in only after government introduced the new policy in April 2018. In any case, elected representatives cannot issue completion certificates in their personal capacity.

TNRERA also order specifically mentions that both the completion certificates do not bear the “name of the project mentioned in the certificate”.

TNRERA has ordered in favour of the complainants directing the developers to refund the amount with interest and also pay the compensation.

Two orders over compensation delivered by the TNRERA. [Source: ET]

### Case law

#### **Refund of Booking amount with interest and compensation in the project not started as per commitment.**

#### **T.Pankaj (Complainant) Vs M/s Vasavi Meppur Constructions Pvt Ltd. (Respondent) Order no. 127/2019 dated 04.10.2019**

The Tamil Nadu Real Estate Authority presided by adjudicating authority Shri G.Saravanan held that Allottee/ Complainant had booked a flat with the respondent in the project “ Vasai Ingai” and paid amount including advance Rs 9,85,226/-. No Agreement for sale has been entered between them. The respondent promised to start the construction soon but was not started and money paid was also not returned by the respondent.

On the basis of above lots of notices served to respondent but the respondent remained absent. The complainant submitted following documents with affidavit for claiming refund with Interest and compensation:

1. Receipts issued by respondent.
2. A letter from respondent admitted the reasons for delay in project which were beyond the control.
3. A proposal to come out with situation that to convert the project into villas.
4. Letter from complainant sought to cancel the booking and requested for refund the amount.

On the basis of above facts and documents it was proved that there was no progress of the project as promised by the respondent. Therefore complainant is entitled for return of money paid with interest, compensation and cost under section 31 read with section 71 of the RERA Act 2016.

Authority directed to respondent by order that respondent shall pay the amount paid by complainant with Interest @ 10.15% per annum with Rs 1 Lacs as compensation towards mental agony and inconvenience and Rs 20000/- towards

litigation expenses within 30 days of issue of the said order.

## **DELHI**

### **News**

#### **Remedies to homebuyers under Consumer Protection Act and RERA are concurrent, Delhi HC**

The Delhi High Court has held that remedies available to homebuyers under the Consumer Protection Act, 1986 (CPA) and the Real Estate (Development and Regulation) Act, 2016 (RERA) are concurrent.

The order was passed by a Single Judge Bench of Justice Prateek Jalan in a batch of petitions moved by several real estate companies (petitioners) against an order passed by the National Consumer Disputes Redressal Commission. The Commission had held that the jurisdiction of the forums/commissions constituted under the CPA is not ousted by RERA.

The decision follows the Supreme Court's judgment in the case of *Pioneer Urban Land and Infrastructure Ltd. & Anr. vs. Union of India & Ors.* The Supreme Court had held that remedies given to allottees of flats/apartments are concurrent and such allottees are in a position to avail remedies under the CPA and the RERA, in addition to triggering the provisions of the Insolvency and Bankruptcy Code, 2016.

The petitioners argued that the issue involved in Pioneer was only with respect to the relationship between the remedies provided under IBC and RERA, and the question of the inter-relationship between RERA and CPA was neither raised nor argued.

#### **Homebuyers' body asks PMO to bring RERA officials under CVC**

Home buyers' body FPCE has urged the Prime Minister's Office to bring officials enforcing the provisions of the Real Estate (Regulation & Development) Act (RERA) under the ambit of the Central Vigilance Commission.

In its letter to the PMO, the Forum for People's Collective Efforts (FPCE) has also recommended that all orders passed under RERA should be subjected to audit by the Comptroller Auditor General of India (CAG) to check for compliance with RERA provisions.

#### **Delhi HC directs civic authorities to conduct drone surveillance to detect illegal constructions**

In the hearing of a petition regarding problems of congestion and parking on the roads in the Karol Bagh area the Delhi High Court has directed the civic authorities to conduct "drone surveillance" for identifying unauthorised construction and fire safety issues in the area and submit their report before October 14.

## **MSME**

#### **Gadkari launches CII TechSaksham to support MSMEs' technology adoption**

Nitin Gadkari, Minister for MSMEs and Road Transport & Highways, on 29/08/2019, launched 'CII TechSaksham'- a project focused on supporting

MSMEs in India to become tech-enabled. This is the first PAN India program launched by Gadkari to bolster the competitiveness of the MSME sector while the country embraces Fourth Industrial Revolution.

#### **MSMEs need not use IBC to recover dues**

If one is registered as an MSME. The MSMED Act provides an alternative solution to recover the pending dues of MSME-registered vendors and this would include start-ups.

#### **Govt proposes to reduce IPR fees for MSMEs and startups**

The government has proposed to reduce fees for various intellectual property rights like patents and designs for micro, small and medium enterprises and startups to promote innovation, Commerce and Industry Ministry said on Monday. An individual, group or industry has to pay fees at different levels of intellectual property rights (IPR) application filings.

As per the proposal, fees for micro, small and medium enterprises (MSMEs) and startups for filing of patent applications will be reduced to Rs 1,600 or Rs 1,750 from Rs 4,000 or Rs 4,400.

## **CORPORATE LAWS & OTHER COMMERCIAL POLICIES**

#### **CSR violations not to be treated as criminal offence: Nirmala Sitharaman**

Allaying industry concerns, Finance Minister Nirmala Sitharaman on Friday said violations of CSR norms under the companies law will be treated only as a civil liability and not as a criminal offence. The corporate affairs ministry would review the sections concerned under the Companies Act, she said. Industry has expressed concerns over penal provisions for non-compliance with Corporate Social Responsibility (CSR) requirements in the amended Companies Act, 2013.

[Source: ET]



#### **Companies to face penal action for not meeting CSR rules**

The Parliament has passed amendments to Companies Act. The bill now advocates for stricter laws for corporate social responsibility (CSR) spending by corporates. After the amendment, violation of the CSR rules could land company officials in jail for up to 3 years. Companies violating the rules will face a penalty of Rs 50,000 to Rs 25 lakh. Companies will have to give details about the spending of money and they have been given a three-year window to adhere. [Source: ET]

#### **eKYC, Digital KYC for opening bank accounts to make process secure: UIDAI**

The recent amendments to anti-money laundering rules allowing voluntary use of Aadhaar for opening of bank accounts and the modalities of digital KYC for cases where verification is done using other documents like voter ID and driving licence will make the process secure and convenient for users,

as said by UIDAI CEO. The government, last week, had notified amendments to the Prevention of Money-Laundering (Maintenance of Records) rules to allow voluntary use of the biometric identifier for opening of bank accounts, and had also spelt out the detailed procedure for 'digital KYC' to be performed in case of verification done via documents like voter ID and driving licence.

[Source: ET]

### **The Central Government has made further amendments to Schedule III to the Companies Act, 2013 vide Notification dated 11th October 2018.**

As per the said notification, Division III has been inserted in respect of Financial Statements for a Non-Banking Financial Company (NBFC) whose financial statements are drawn up in compliance of the Companies (Indian Accounting Standards) Rules, 2015.

The changes to AoC-4 Non-XBRL form necessitated by insertion of Division III in Schedule III of CA 2013 are under development and the revised form exclusively for such class of companies would be made available for filing purposes soon.

### **MISCELLANEOUS**

#### **Cabinet Approves Proposal for Review of FDI Policy on Various Sectors**

The Union Cabinet chaired by the Prime Minister Shri Narendra Modi has approved the proposal for review of Foreign Direct Investment on various sectors.

#### **Changes in the FDI Policy**

##### **Coal Mining**



It has been decided to permit 100% FDI under automatic route for sale of coal, for coal mining activities including associated processing infrastructure, subject to

the provisions of Coal Mines (Special Provisions) Act, 2015 and the Mines and Minerals (Development and Regulation) Act, 1957 as amended from time to time, and other relevant acts on the subject.

*"Associated Processing Infrastructure" would include coal washery, crushing, coal handling, and separation (magnetic and non-magnetic)*

##### **Contract Manufacturing**

It has been decided to allow 100% FDI under automatic route in contract manufacturing in India as well.

Subject to the provisions of the FDI policy, foreign investment in 'manufacturing' sector is under automatic route. Manufacturing activities may be conducted either by the investee entity or through contract manufacturing in India under a legally tenable contract, whether on Principal to Principal or Principal to Agent basis.

##### **Single Brand Retail Trading (SBRT)**

a) With a view to provide greater flexibility and ease of operations to SBRT entities, it has been decided

that all procurements made from India by the SBRT entity for that single brand shall be counted towards local sourcing, irrespective of whether the goods procured are sold in India or exported. Further, the current cap of considering exports for 5 years only is proposed to be removed, to give an impetus to exports.

b) It has been decided that 'sourcing of goods from India for global operations' can be done directly by the entity undertaking SBRT or its group companies (resident or non-resident), or indirectly by them through a third party under a legally tenable agreement.

c) It has been now decided that entire sourcing from India for global operations shall be considered towards local sourcing requirement.

d) Retail trading through online trade can also be undertaken prior to opening of brick and mortar stores, subject to the condition that the entity opens brick and mortar stores within 2 years from date of start of online retail.

#### **Digital Media**

It has been decided to permit 26% FDI under government route for uploading/ streaming of News & Current Affairs through Digital Media, on the lines of print media. [Source: PIB]

#### **Ministry of Commerce & Industry, Department for Promotion of Industry and Internal Trade, Copyright Office has clarified whether a License is required to be obtained for the purpose of utilization of sound recordings in the course of any marriage related function.**

Section 52 of the Copyright Act, 1957 enlists certain acts which do not constitute an infringement of Copyright. Specifically, Sub-section (1) (za) of the aforementioned section, states that: "the performance of a literary, dramatic or musical work or the communication to the public of such work or of a sound recording in the course of any bona fide religious ceremony or an official ceremony held by the Central Government or the State Government or any local authority. In view of the provision contained in Section 52(1)(za) of the Act, read with the explanation thereto, it is evident that the utilization of any sound recording in the course of religious ceremony including a marriage procession and other social festivities associated with a marriage does not amount to infringement of copyrights and hence no license is required to be obtained for the said purpose.

#### **Valuation required under the provisions of the Companies Act, 2013 and the Insolvency and Bankruptcy Code, 2016**

Rule 10 of the Companies (Registered Valuers and Valuation) Rules, 2017 (Rules) read with section 247 of the Companies Act, 2013 (Act) require that a registered valuer shall conduct valuations required under the Act.

Circular No. IBBI/RV/019/2018 dated 17th October, 2018 of IBBI mandates that the valuations required under the Code or any of the regulations made thereunder shall be conducted by a registered valuer.

### **No need to inform government about gift received abroad if valued up to Rs 1 lakh**

Individuals receiving personal gift valued up to Rs 1 lakh need not inform the government about it anymore, the Home Ministry said on 16/09/2019 as it amended Foreign Contribution (Regulation) Act.

Earlier, the threshold value was Rs 25,000, as per the market value of the gift item in India. The Centre amended the rules governing the Foreign Contribution (Regulation) Act, 2011, and notified this change alongside some other modifications.

### **Allahabad Bank board approves merger with Indian Bank**

The board of Allahabad Bank on Monday approved the merger proposal with Indian Bank, making the amalgamated entity the seventh largest public sector lender of the country. Finance Minister Nirmala Sitharaman had on August 30 announced the consolidation of 10 state-run banks into four large-scale lenders.

### **Govt constitutes Company Law Committee to improve ease of doing business**

The government has created a committee to look at recategorization of certain offences under the Companies Act as civil offences as well as review other provisions of the Companies Act and the Limited Liability Partnerships Act 2008.

The company law committee which will be chaired by Injeti Srinivas, secretary of the corporate affairs ministry will look into key issues including the introduction of a settlement mechanism for offences under the companies act as well as de-clogging the National Company Law Tribunals and measure to improve the functioning of statutory bodies under the Companies Act including the Serious Frauds Investigations Office (SFIO), The Investor Education and Protection Fund Authority (IEPFA) and the National Financial Reporting Authority (NFRA).

### **Exemption from share buyback tax major relief to IT bigwigs**

The government's decision to not levy 20 per cent tax on buyback programmes of companies that had announced the move before July 5 will spell a major relief for IT giants Infosys and Wipro, and other companies.

In July, the government, as part of the Budget, had announced a 20 per cent tax on share buyback by listed companies - a move that would have hurt IT services firms that often opt for the route to return surplus cash to shareholders.

### **View: Lowering of corporate-tax rate will widen tax net**

Finance minister Nirmala Sitharaman's announcement on Friday to slash the basic corporate-tax rates to 22% for all domestic companies without tax exemptions or incentives, and 15% for new manufacturing companies is a bold move. It is, indeed, the most significant corporate tax reform after the goods and services tax (GST).

The new rate should reduce the cost of capital and catalyse investments by repositioning India as one

of the most competitive economies. In a way, GoI has handed over its own corpus of about Rs 1.45 lakh crore to India Inc to improve its balance-sheet.

### **Facebook to invest in tech startups in India**

In a move that would give a tremendous boost to the startup ecosystem in India, social media major Facebook is gearing up to make substantial investments in technology startups, a top official from the company said on 27.09.2019. "We now have shown willingness to make direct investments in technology startups in India. We are willing to spend our time, and energy to tap the massive depth of engineering talent in the country," said Ajit Mohan, vice president and managing director, India Facebook, while addressing the opening session of the second edition of 'Huddle Kerala 2019,' one of Asia's largest congregations on startup ecosystem in Thiruvananthapuram.

### **Corporate tax rate cuts: New contract manufacturing units eligible for 15 per cent tax benefit**

New contract manufacturing outfits can avail of the 15% corporate tax scheme but companies that opt for the 22% tax regime won't be eligible for accumulated minimum alternate tax (MAT) credit, a senior government official said.

The finance ministry will clearly specify what constitutes reorganisation or reconstruction of an entity and new manufacturing eligible for the 15% rate as part of detailed clarifications on the new corporate tax framework to clear the air on a number of issues that have been raised by industry. Companies that opt for the reduced corporate tax rate of 22% cannot claim any exemption or incentives, including accumulated MAT credit.

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